

DOUBLE JEOPARDY — Retrial after defendant has requested a mistrial —

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When a defendant has requested and received a mistrial for reasons not involving charges of prosecutorial misconduct, double jeopardy does not bar the State from retrying the defendant.

Generally, when a mistrial is granted on motion of defendant, retrial is not barred on double jeopardy grounds. *State v. Wilson*, 134 Ariz. 551, 554, 658 P.2d 204, 207 (App. 1982); *United States v. Dinitz*, 424 U.S. 600, 607-08, 96 S.Ct. 1075, 1079-80, 47 L.Ed.2d 267 (1976); *United States v. Jorn*, 400 U.S. 470, 485, 91 S.Ct. 547, 557, 27 L.Ed.2d 543 (1971). The defendant who requests a mistrial is generally deemed to have consented to a retrial, thus "remov[ing] the bar of double jeopardy." *State v. Henderson*, 116 Ariz. 310, 314, 569 P.2d 252, 256 (App. 1977) (citations omitted).

Miller v. Superior Court, 189 Ariz. 127, 130, 938 P.2d 1128, 1131 (App. 1997).